IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 18733 of 2006(E)

PETITIONER:

K.T.FRANCIS,
KOCHUPARAMBIL HOUSE,
KARIMKUNNOM.P.O,
PLANTATION, THODUPUZHA, (WORKED AS ROOM ATTENDER,
YATHRINIVAS, DEPARTMENT OF TOURISM,
ERNAKULAM).

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS:
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1. **STATE OF KERALA,**
   REP. BY SECRETARY TO GOVERNMENT,
   GENERAL ADMINISTRATION (TOURISM A) DEPARTMENT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR,**
   DEPARTMENT OF TOURISM,
   THIRUVANANTHAPURAM.

3. **THE JOINT DIRECTOR (ENQUIRY OFFICER),**
   DEPARTMENT OF TOURISM,
   ERNAKULAM.

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.18733/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MEMO OF CHARGES ALONG WITH THE STATEMENT OF ALLEGATIONS DT. 28.4.2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE REPLY DT. 9.6.2000 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE ENQUIRY REPORT DT. 18.3.02 OF THE ENQUIRY OFFICER.

EXT.P4:- COPY OF THE REPLY DT. 8.6.02 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE ORDER DT. 28.10.02 ISSUED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE REPLY DT. 5.11.02 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE ORDER DT. 10.12.02 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ORDER DT. 31.5.04 ISSUED BY THE IST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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V.GIRI, J.

W.P.(C)No.18733/2006

Dated this the 4th day of December 2007

JUDGMENT

While working as Room Attender in the Yathri Nivas in the Department of Tourism, the petitioner was served with Ext.P1 memo of charges inter alia alleging that he has misbehaved with a sweeper in the Devikulam Guest Home Smt.M.C.Annamma and that on 21st September 1999 when the other staff were not there in the Guest House, petitioner had tried to harm her and he had made such attempts even earlier. Petitioner submitted Ext.P2 objection thereto. An enquiry was conducted by one Smt.P.K.Vijayakumari who was the Manager in charge of the Guest House in Devikulam. Ext.P3 is the enquiry report which refers to the submission given by the complainant Smt.M.C.Annamma and three other persons Sri.V.H.Mohammed Kunju, Bunglowmaty, V.K.Suresh, Lascar and Sri.Ramar, who was on duty. Apparently all persons supported the version of Smt.M.C.Annamma. In the enquiry report reference is made to the fact that Annamma is a physically handicapped person with 60% disability. Copy of the enquiry report was forwarded to the petitioner. Ext.P5 show cause notice was issued by the Director proposing to dismiss the petitioner from service. His objections as

Ext.P6 was considered and rejected under Ext.P7 order passed by the Director. It was affirmed by the Government under Ext.P8. Exts.P7 and P8 are under challenge in this writ petition.

2. A counter affidavit has been filed by the Government supporting the orders impugned.

3. I have gone through Ext.P3 enquiry report and the impugned orders as well. Ext.P3 report refers to the complaint given by M.C.Annamma which apparently was supported by the other four persons mentioned above. If the allegations levelled against the petitioner regarding sexual harassment of a co-worker is even half true then obviously the petitioner has no business to remain in government service. The allegations also disclose the commission of penal offences. It is difficult to understand as to why the criminal law was not set in motion. Any way,while considering the correctness of Exts.P7 and P8 orders, I do not wish to make any further comments in this matter.

4. Learned counsel for the petitioner submits that the petitioner was not given an opportunity to participate in the enquiry which resulted in Ext.P3. He contends that the petitioner was not given an opportunity to cross examine all these persons who are said to have given statements in support of the complainant nor

was he given any opportunity to put any question to the complainant. No hearing was conducted by the enquiry officer. These aspects were highlighted in the objections filed by the petitioner in Ext.P4.

5. On a perusal of Exts.P3, P7 and P8 orders, I find that the allegation that the petitioner was not given an opportunity to put any question to the persons who had given statements before the Enquiry Officer or even to the complainant as such, does not seem to have been controverted. Nor is there any reference to the said contention taken up by the petitioner either in Ext.P7 or in Ext.P8 orders. In other words, I am constrained to accept the contention of the petitioner that he was not permitted to effectively participate in the enquiry and the evidence seems to have been collected behind his back. It would not be adequate for the purpose of imposing major punishment on a government servant.

6. In the result, Exts.P7 and P8 orders are set aside. In circumstances where the petitioner has not been given an opportunity to make an effective participation in the enquiry, I am constrained to issue a direction to the second respondent to conduct a fresh enquiry into the allegations contained in Ext.P1. At the same time it is made clear that it is open to the second

respondent to amend the memo of charges or issue an additional memo of charges and conduct an enquiry on the same as well. Fresh enquiry shall be completed, after giving due notice to the petitioner, and giving him an opportunity to put questions to any person who might have given statement against him at the enquiry. Thereafter copy of the report shall be given to the petitioner and appropriate action shall be taken against him. Entire process in this regard shall be completed within a period of six months from the date of receipt of a copy of this judgment.

7. The Supreme Court has referred to **Visakha and others v State of Rajastan** (AIR 1997(SC)3011) case and laid down elaborate guidelines in the manner in which complaints of sexual harassment by woman in work places have to be dealt with. The allegations will have to be looked into by a committee constituted for each department headed by a woman and the recommendations will have to be carefully scrutinised by the government or the appointing authority. In the present case, the petitioner is a government servant and the complaint against the petitioner raised by Smt.M.C.Annamma shall be referred to such a committee constituted by the Government to look into the allegations of sexual harassment of woman in work places and an independent enquiry

may be conducted into such allegations. This shall be proceeded with independently and unrelated to the departmental proceedings which have to be completed in the manner aforementioned. In the circumstances a copy of the judgment shall be forwarded to the first respondent for compliance with the directions mentioned above.

The writ petition is disposed of as above.

V.GIRI, JUDGE

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